

AMENDED IN SENATE SEPTEMBER 1, 2009

AMENDED IN SENATE AUGUST 24, 2009

SENATE BILL

No. 579

Introduced by Senator Lowenthal

February 27, 2009

An act to add and repeal Section 40440.13 of the Health and Safety Code, relating to the South Coast Air Quality Management District, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 579, as amended, Lowenthal. South Coast Air Quality Management District: CEQA: *permits*.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA exempts certain specified projects from its requirements.

Under existing law, every air pollution control district or air quality management district in a federal nonattainment area for any national ambient air quality standard is required to establish by regulation, a system by which all reductions in emissions of air contaminants that are to be used to offset certain future increases in the emission of air

contaminants are banked prior to use. The South Coast Air Quality Management District (district) promulgated various rules establishing offset exemptions, providing Priority Reserve offset credits, and creating or tracking credits used for offset exemption or Priority Reserve projects. In *Natural Resources Defense Council v. South Coast Air Quality Management District* (Super. Ct. Los Angeles County, 2007, No. BS 110792), the superior court found the promulgation of certain of these district rules to be in violation of CEQA.

~~This bill would require authorize the district to allow certain sources of air contaminants to continue to operate, and issue permits under specified circumstances, notwithstanding this court decision, until a final outcome has been reached in the case, including the exhaustion of all appeals, or until the district completes the environmental reviews required by the court decision. These. The provisions of the bill would be repealed on May 1, 2012.~~

~~By imposing additional duties on a local air district, the bill would impose a state-mandated local program.~~

(2) This bill would state the findings and declarations of the Legislature concerning the need for special legislation.

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~(4)~~

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: ~~yes~~-no.

State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) As a result of the superior court decision in *Natural*
4 *Resources Defense Council v. South Coast Air Quality*
5 *Management District* (Super. Ct. Los Angeles County, 2007, No.
6 BS 110792) holding *that* the South Coast Air Quality Management
7 District (district) violated the requirements of the California
8 Environmental Quality Act (CEQA) (Division 13 (commencing

1 with Section 21000) of the Public Resources Code) in the
2 promulgation of certain district rules, the district is unable to issue
3 over a thousand pending permits that rely on the district's internal
4 offset bank to offset emissions.

5 (b) The district may also have to set aside several thousand
6 permits that were previously issued in reliance on the district's
7 internal offset bank.

8 (c) Prompt legislative action is necessary as an interim measure
9 ~~until the case described in subdivision (a) has concluded through~~
10 ~~the judicial system~~; otherwise projects will be stopped from going
11 forward or frozen in place, representing significant losses to the
12 economy and the loss of numerous well-paying jobs.

13 (d) *Nothing in the case described in subdivision (a) requires*
14 *the setting aside of any permit issued by the South Coast Air*
15 *Quality Management District to any essential public service, that*
16 *relied on Rule 1309.1, nor any permit that relied on Rule 1304,*
17 *between September 8, 2006, and November 3, 2008.*

18 SEC. 2. Section 40440.13 is added to the Health and Safety
19 Code, to read:

20 40440.13. (a) Notwithstanding the decision of the court in
21 Natural Resources Defense Council v. South Coast Air Quality
22 Management District (Super. Ct. Los Angeles County, 2007, No.
23 BS 110792), the south coast district ~~shall do both of the following:~~

24 ~~(1) Allow sources of air contaminants that are operating under~~
25 ~~a permit issued in reliance on south coast district Rule 1304 as~~
26 ~~amended on June 14, 1996, or Rule 1309.1 as amended May 3,~~
27 ~~2002, to continue to operate.~~

28 ~~(2) Issue permits in reliance on south coast district Rule 1304~~
29 ~~as amended on June 14, 1996, or Rule 1309.1 as amended May 3,~~
30 ~~2002. may issue permits in reliance on, and in compliance with,~~
31 ~~south coast district Rule 1304, as amended on June 14, 1996,~~
32 ~~except for an electrical generation facility, and Rule 1309.1, as~~
33 ~~amended May 3, 2002, for essential public services, as defined in~~
34 ~~subdivision (m) of Rule 1302, as amended December 6, 2002.~~

35 (b) Nothing in this section affects *the decision in the case*
36 *described in subdivision (a) concerning the adoption, readoption,*
37 *or amendment, or environmental review, of south coast district*
38 *Rule 1315.*

39 ~~(c) The south coast district shall keep track of offsets or credits~~
40 ~~relating to permits described in paragraphs (1) and (2) of~~

subdivision (a), and shall make this information available to the public. The south coast district shall ensure internal offset or credit accounts created or maintained by the south coast district account for all of the offsets or credits relating to permits described in paragraphs (1) and (2) of subdivision (a), and shall ensure that the internal accounts are consistent with the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(d) This section shall become inoperative upon any of the following:

(1) A final outcome has been reached in the case described in subdivision (a), including the exhaustion of all appeals.

(2) The south coast district completes all environmental reviews required by the court decision described in subdivision (a).

(c) *In implementing subdivision (a), the south coast district shall rely on the emission reduction credit tracking system used prior to the adoption of Rule 1315, until a new tracking system is approved by the United States Environmental Protection Agency and is in effect, at which point that new system shall be used by the south coast district in implementing subdivision (a). The south coast district shall make information concerning the credits, and the tracking of these credits, available to the public.*

(e)

(d) This section shall remain in effect only until May 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before May 1, 2012, deletes or extends that date.

SEC. 3. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of unique circumstances concerning the South Coast Air Quality Management District.

SEC. 4. ~~No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.~~

SEC. 5.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within

1 the meaning of Article IV of the Constitution and shall go into
2 immediate effect. The facts constituting the necessity are:

3 Due to the court decision in Natural Resources Defense Council
4 v. South Coast Air Quality Management District (Super. Ct. Los
5 Angeles County, 2007, No. BS 110792), the South Coast Air
6 Quality Management District is unable to issue over a thousand
7 pending permits that are either exempt from offset requirements
8 or qualified to use offset credits from the district's Priority Reserve
9 and is required to set aside thousands of permits already issued.

10 Therefore, in order to allow the district to issue permits in an
11 expeditious manner as an urgent interim measure ~~until final~~
12 ~~disposition by the judicial system~~, it is necessary that this act take
13 effect immediately.

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